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## US Policy on Small Arms Transfers: A Human Rights Perspective

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### Abstract

From Somalia and Afghanistan to Bosnia, Haiti, Colombia, Rwanda, Sierra Leone, Liberia and Congo, small arms and light weapons were a common feature of the human rights calamities of the 1990's.

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\*A shorter version of this paper is published as "U.S. Small Arms Policy: Having It Both Ways," in the Summer 2007 issue of World Policy Journal.

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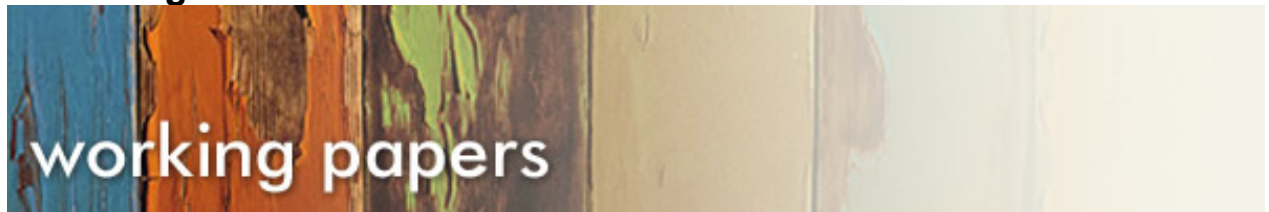


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### **US Policy on Small Arms Transfers: A Human Rights Perspective**

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## Introduction

From Somalia and Afghanistan to Bosnia, Haiti, Colombia, Rwanda, Sierra Leone, Liberia and Congo, small arms and light weapons were a common feature of the human rights calamities of the 1990's. More than a hundred low-intensity conflicts flared across the globe in that final decade of the bloodiest century, and virtually all of them were fought with small arms and light weaponry.<sup>1</sup> Hand grenades, rocket-propelled grenades and bazookas, mortars, machine guns, and shoulder-fired missiles were the common weapons of warfare, along with the ubiquitous AK-47--as readily slung over the shoulder of a 14 year old boy as a 40 year old man. Human rights and humanitarian organizations pondered the evidence: there was an inescapable linkage between the abuses they sought to curb, and the prevalence of these easy to handle, durable, and imminently portable weapons. In many instances the weapons were used as direct instruments of repression and devastation. In others, armed groups and government-sponsored militia used them to facilitate assaults with cruder weapons, spread fear, and create insecurity that effectively deprived people of their livelihood. Ironically, none of the countries in turmoil produced their own small arms.<sup>2</sup> Behind the plethora of weapons lurked shadowy arms dealers looking for a profit, indifferent to the public's moral outrage and UN-imposed arms embargoes.

No one was more concerned about the growing threat of small arms to human security than Oscar Arias, President of Costa Rica from 1986-1990 (and re-elected in 2006). Arias' work to end years of civil conflict in Central America won him the Nobel Prize for Peace in 1987, but it also left him with first-hand appreciation of the social, political and economic havoc that could be wrought by the untrammelled flow of weapons into small countries. Arias spurred his fellow Nobel Peace Laureates to action. In 1997 they developed a Code of Conduct on small arms transfers and urged all states to exercise the greatest caution and restraint in transferring deadly weapons.

Amnesty International, one of the Nobel signatories, took up this charge directly. Its probing questions about the existing provisions of international law led scholars at Cambridge University's Lauterpacht Center for International Law to develop a draft framework convention on arms transfers. The draft treaty was introduced during sessions sponsored by non-governmental organizations at the UN's 2001 world conference on small arms and it stimulated discussion about a normative response to small arms proliferation. Two years later, Amnesty International, Oxfam, and the International Action Network on Small Arms joined forces to launch a campaign they called Control Arms.

Control Arms has focused attention on human rights problems and the high costs to human security attributable to weapons in the wrong hands, and it has called for a set of global principles to guide and govern responsible arms transfers. From 2003-2006 campaign activities were chiefly aimed at mobilizing public opinion in advance of the July 2006 UN Review Conference on Small Arms. That conference was run by rules that required unanimity on virtually all substantive and procedural matters. Sadly but not surprisingly, it failed to produce results. When the United Kingdom reintroduced the issue a few months later, during the regular session of the UN General Assembly, the outcome was considerably different. The UK resolution called for UN to consult with member states and appoint a group of governmental experts to examine the feasibility and scope of a treaty to establish "common international standards for the import, export and transfer of conventional arms." The resolution was approved in committee by a vote of 139 to 1, with 24 abstentions, and in the plenary session by 153 to 1, with 24 abstentions. In both cases, the United States cast the lone vote of opposition.

### US Policy: Conundrums and Contradictions

For many advocates of human rights and human welfare, and for many neutral observers as well, the US stance on small arms is an enigma.

On one hand, the US appears a strong proponent of careful handling and restraint in small arms transfers. The US was one of the first countries to call attention to the growing small arms problem, and its own policy on arms exports is widely held in high regard. Senior US officials frequently point to US laws, practices, and enforcement procedures as an effective model for other nations to follow. In advance of the 2006 UN small arms review conference, then-Assistant Secretary of State John Hillen made the case in an op-ed published in the *Baltimore Sun*:

The United States sets the gold standard for export control. Over half a century ago, Congress legislated a cradle-to-grave approach to weaponry in which government agencies follow each piece through its life cycle, from manufacturing and brokerage through export and retransfer. ... We won't see a meaningful reduction in illicit small arms trade until all countries adapt responsible export control laws and they are enforced consistently -- everywhere, every time.<sup>3</sup>

The laudatory view of US policy is so widely shared that even otherwise critical analysts and NGOs join the chorus. In 2005 the independent Small Arms Survey ranked the US first among 25 countries in its Transparency Barometer, with a score of 16 out of 20 on an index assessing export reporting practices. Similarly, a consortium of non-governmental organizations reviewing state efforts to implement the UN's 2001 action plan on small arms gave the US mostly high marks for its policy and programs. A 2006 report from the US Congressional Report Service sums up the consensus: "The export licensing and monitoring laws, regulations and procedures of the United States are widely acknowledged to be the most transparent, comprehensive, and stringent in the world."

On the other hand, some actions belie the strongly principled policy in a striking way, raising questions about US commitment to principled practice and to the principles themselves. It is difficult, for example, to reconcile the US vote on the Arms Trade Treaty initiative with its testimony to the Security Council in 2002 advocating strict export and import controls as "the most effective way to prevent small arms and light weapons from getting into the hands of those who will misuse them," or with efforts to secure a universal agreement on export criteria for the shoulder-fired missiles known as MANPADS (man portable air defense systems). The US did not explain its 2006 UN vote, and it remains unclear why it would without cause simultaneously isolate itself diplomatically and expend political capital opposing a resolution introduced by its closest ally.

There are also puzzling questions about the breadth of the policy and the range of its application. Those inclined to take Assistant Secretary Hillen's claims at face value, thus, cannot easily make policy-sense of the story about an aborted transfer of surplus ammunition and arms from Bosnia to brokers acting on behalf of Rwanda in 2004.<sup>4</sup> On November 18, 2004, the transfer was formally authorized by the American commander of the NATO-led Stabilization Force, SFOR. Members of the European Union protested the transfer, and two weeks later it was cancelled. Rwanda was under a partial UN arms embargo at the time, and there were concerns that weapons could be diverted to warring parties in Congo or elsewhere in the region. Flight data from around the time of the scheduled shipment suggest that the transfers might have gone forward anyway, but whether or not the transaction was completed is not the issue here. Rather, the question is how—even hypothetically—would such a transfer square with the policy as outlined by Hillen? Publicly available documents establish that a transfer from Bosnian stockpiles was indeed planned and that US officials had direct responsibility for authorizing it — yet it clearly did not engage any of the "cradle to grave" oversight procedures in which the US takes due pride.

Many of the details of the 2004 incident remain obscure, but questions about transfers to Iraq in the same period have been elucidated by a September 2006 report from the US Special Inspector General for Iraq Reconstruction.<sup>5</sup> The report charged that the Department of Defense (DoD) transferred hundreds of thousands of pistols, assault rifles and machine guns to Iraqi security forces without recording serial numbers or establishing any other mechanism for accountability. DoD protested that it was not responsible for cataloging weapons destined for a foreign government, but the Inspector General rejected these claims, citing DoD regulations that require automated registration of all small arms in their inventories, including those released under foreign military sales arrangements. It is disquieting that DoD officials did not recognize that their own procedures required them to register the weapons. From a policy perspective it is yet more troubling that none of the agencies involved framed the incident in terms of the larger policy, with its highly developed procedures about the responsible transfer of US weapons. Despite high standards and a strong commitment to careful handling, the US oversaw a 2-year program of transfers into a highly volatile, insecure region without even minimum standards of accountability, recklessly contravening the tenets of its own policy and best practice.

This paper is an effort to sort through the conundrums and make sense of the contradictions in US policy behavior. To tip my hand at the outset, and help readers follow my reasoning, I will argue that the full measure of US policy is not adequately represented on the webpages of the US State Department. Contradictions such as those outlined above are not simply oversights, or common failures of implementation, or even the result of flagging political will. There is a bigger and more complicated picture. The US has pursued two quasi-separate approaches to arms transfers that are better understood as a single, comprehensive policy. To differentiate the two approaches, I have called one the “principled policy” and the second, a “shadow policy,” but I consider them to be elements of a single policy.

In the section that immediately follows, I have gone to some length to detail the laws, regulations, and the numerous programs set up to implement the principled policy. Some of the detail is no doubt tedious, but I hope to emphasize the earnest and very real efforts on the part of the US government to curtail the patently illicit weapons trade. (To my knowledge there is no existing comparable review of implementing programs, and perhaps even the seasoned arms control professional will find some practical utility in this overview.) There is much to admire in the policy and the implementing programs. The principled approach, however, is continuously at risk of being undermined by the shadow policy. Transactions arranged in the shadows include—but are not limited to—covert transfers. The category of shadow transfers should be understood as a residual one, used to describe any arms transfer that involves the US but which in one way or another bypasses the highly developed arms export control regime. Such transfers escape the cradle-to-grave vigilance that is a hallmark of the principled policy.

In the concluding section, I will argue that it is US reluctance to relinquish its resort to shadow policy that explains its opposition to the development of comprehensive global norms. Loopholes in the scope of the principled policy explain the failure to provide policy-mandated control over more benign and openly authorized transactions.

One final introductory note is in order. There is nothing novel in the recognition of US engagement in what I have called shadow transfers. Many others have observed, and written about, US arms transfers that do not easily fit within the bounds of the policy that is publicly promoted and lauded. (Weapons supplied to the Nicaraguan Contras and the Afghan *mujahideen* in the 1980’s are the best known examples, but they are far from the only ones.) Some shadow transfers are related to the so-called “gray-market trade,” and the analytical tendency has been to treat them—and any legal or oversight mechanisms that apply to them—either as exceptions to formal policy, or as otherwise beyond the scope of policy analysis. The modest contribution and innovation of this paper is an argument that US policy itself must be *problematized* and analytically re-conceptualized to acknowledge that shadow transfers are an integral part of policy,

not an exception to it. Just as there are costs to the US for pursuing a dual-track policy, there are costs to analysts and advocates who sideline the shadow policy from the scope of their investigations and initiatives. Most notably, they risk directing their critical assessments and political strategies to the part of the overall policy apparatus that is in best shape, while neglecting the aspects that most need attention.

### US Policy: Alternative Representations

Foreign policy analysis is rarely a straightforward enterprise. Even in the most open realm of policy the analyst is challenged to sift through speeches, official statements, law and regulations, budgetary proposals and whatever can be gleaned from news reports and conversations with policymakers to identify guiding principles, deep commitments, and possibly shifting winds. Publicly available policy documents are foundational to such work, and the study of US small arms policy is greatly facilitated by the availability of such documents on various State Department websites. No public presentation of policy, however, should be accepted at face value, and the small arms policy is no exception.

So what exactly *is* US policy on small arms transfers? As suggested above, there are two representations of the policy. One of them is expressed in terms of high principles, and it is generally reflected on State Department webpages that present US laws, regulations and programs. The other is a shadow policy that rests on political considerations, including expediency. It must largely be pieced together or inferred from news reports and information about activities that do not seem consonant with the principled policy. Both approaches are encased in law and one can not be considered more “official” than the other. The alternative representations presented below reflect different political values, and different political priorities, but analytically, they must be understood as different aspects of a single, integrated approach to small arms transfers.

#### The Principled Policy

The first representation of US policy presented here draws heavily on publicly available policy statements and documents, but that alone should not be cause for discount. There is much to suggest, as one senior official put it, that the US practices what it preaches. The overview that follows is lengthy because the policy and implementing programs are well-developed and complex. There is considerable substance to the principled policy, and it is worthy of consideration by even the most jaded critic of US foreign policy. Indeed, it is arguably the critic who should attend to this overview most closely, for it is only through examination of the principled policy that one can appreciate the aberrations implied by the shadow policy outlined in the following section.

The small arms policy openly articulated by the US government is predicated on the country’s superpower status and its role as a leading and reputable purveyor of small arms and light weapons. In the 1930’s the federal government asserted its authority to regulate and control all US arms transactions, and in the intervening decades it has taken that responsibility seriously. Policy documents of record attest to a principled approach, emphasizing restraint, control, and transparency in order to reduce the risks of destabilizing international peace.<sup>6</sup> Public statements of policy advertise a strong commitment to global leadership in “efforts to mitigate the illicit trafficking and destabilizing accumulation of SA/LW through multilateral diplomacy and bilateral assistance to countries in need.”<sup>7</sup> Notwithstanding its attachment to the right of self defense and the legitimate trade in weapons,<sup>8</sup> the US has declared itself a global leader in “efforts to mitigate the illicit trafficking and destabilizing accumulation of small arms and light weapons.”<sup>9</sup>

The principled policy contains some tensions: commercial interests are balanced by considerations for national security, and the right to self defense is offset by the need to keep weapons out of the hands of those who would use them for criminal purpose. As presented, these tensions aren't generally seen as problematic, though – there is little attempt to disguise or finesse them. Even the titles of the law that frame the policy provide a sense of the varied interests and concerns that inform it: the National Firearms Act, the Gun Control Act, the Arms Export Control Act, the Export Administration Act, and the Foreign Assistance Act.<sup>10</sup> Provisions of these various laws have been incorporated into the US Code, establishing durable authority for government-to-government transfers and oversight of commercial transactions. Transfers from the US government known as Foreign Military Sales are arranged through the Pentagon, jointly overseen by the State Department and the Department of Defense, and in some cases they require advance notice to Congress.<sup>11</sup> Government-to-government weapons *sales* are complemented by *grant* programs that various permit the Pentagon to dispose of excess weapons and allow the President to draw down current stock for a range of emergency situations and national security needs.<sup>12</sup> Provisions of the US Code, recorded in Title 22, anticipate the comprehensive “cradle to grave” oversight of these government transfers, whether by sale or gift.<sup>13</sup> (The statutory language of Title 22 does not provide for exceptions, but as discussed in the section below on shadow transfers, in actual practice, a number of exceptions to this broad policy are made.)

Direct commercial sales are also covered by broad and comprehensive requirements for oversight, but these transactions involve separate sets of procedures. For arms manufacturers and others involved in the arms trade, the International Traffic in Arms Regulations (ITAR) is the relevant center of the legal regime. (The ITAR regulations are derived from statutory provisions of the Arms Export Control Act, recorded in various subchapters of the US Code, Title 22.) From start to finish, ITAR regulates transactions involving defense articles included on the US Munitions List, and the Export Administration Regulations (EAR) similarly govern dual-use exports covered by the Export Administration Act (EAA). (In addition to howitzers, rockets, and missiles, such small arms as pistols and revolvers, assault weapons, combat shotguns and ammunition are all considered defense articles subject to ITAR.<sup>14</sup> Non-military shotguns, with barrel length shorter than eighteen inches, are considered dual-use.) Agent registration, licensing and authorization is required for every aspect of a sales transaction for items on the Munitions List, from production to shipping to end-user certification and re-transfer provisions. Transfers to countries under US or UN embargo are explicitly prohibited, and brokering activities are defined in such a way as to provide US extra-territorial jurisdiction over arms deals arranged by anyone under US jurisdiction, whether the weapons are of US origin or not, and whether the transaction is arranged in US territory or not.<sup>15</sup>

At least nominally, authorization for all of these transfers—whether government-sponsored or commercial—is guided by human rights considerations. The 1995 presidential policy statement on conventional arms transfers (cited above) lists human rights performance as a consideration for arms transactions, but the principle finds firmer anchor in a 1976 law. As part of the legislation that established the promotion of human rights as a US foreign policy objective, Congress prohibited security assistance to any government engaged in “a consistent pattern of gross violations of internationally recognized human rights.” Gaping loopholes prevent the legislation from being used to cut off transfers entirely, and consequently it is often dismissed as ineffectual. While the legislation appears to give Congress qualified powers to suspend arms transfers, it also explicitly allows a president to override Congress if he can certify “significant improvement in the human rights record.” This substantial limitation notwithstanding, the law affords Congress—and constituents—opportunity to scrutinize security packages for certain countries. At very least, Congress may require an extensive justification and human rights review of the country in questions (under pressure of a 30-day deadline), and human rights concerns have sometimes prompted special hearings or the imposition of restrictions on authorized transfers, including required presidential certification that specified human rights conditions are being



met.<sup>16</sup> Because *security assistance* is defined very broadly in the statute to include licensed commercial export and government sale of defense and security items, as well as the grants, loans, and training that are conventionally understood as military aid, the full range of military transfers is included in its scope. Accordingly, this law has shaped the approvals process for the range of US arms deals that are overseen by the State Department. These routinely include sign-offs by officials at several levels in the Department of State (including the Bureau for Democracy, Human Rights, and Labor), Department of Defense, and staff from embassies abroad.<sup>17</sup>

The question of who should receive US weapons has been viewed primarily as a foreign policy matter, and the State Department has been assigned principal responsibility for overseeing the approval of authorized arms deals. Full responsibility for the broad policy on small arms transfers, however, is shared by several cabinet level offices, including the Departments of Defense, Commerce, Justice, Homeland Security, and Treasury as well as Department of State. Congressional authority and oversight for implementing programs is exercised through the House and Senate Appropriations committees, the Armed Forces committees, and the International Relations committees—and various subcommittees. More than a dozen quasi-independent agencies are involved in the oversight and enforcement of the policy and its implementing framework, with nearly as many distinct programs. It is only in reviewing the array of these programs that the principled policy can be fully appreciated. To facilitate that task, I have drawn on the descriptive framework employed by Richard Grimmett in a 2006 background paper on US small arms policy prepared for members of the US Congress. As a publication of the bi-partisan Congressional Research Service, this presentation can be viewed as a quasi-official view of current policy. Grimmett describes US policy as a multi-pronged approach with four principal objectives:

- Efforts to curb black market or unauthorized transfers of small arms to zones of conflict, to terrorists, to international criminal organizations, and to drug traffickers
- Attempt to raise the arms export standards of other nations to US standards
- Streamline and strengthen US export procedures to improve accountability without interfering with the legal trade in and transfer of arms
- Support the destruction of excess stockpiles of small arms, particularly in regions where conflicts have ended.<sup>18</sup>

In the numbered sections below, programs that relate to each of these four objectives are discussed in turn.

### 1. Curbing Black Market Transfers

The first element in the multi-pronged policy as outlined in Grimmett's CRS report involves efforts to curb black market or unauthorized transfers of small arms to zones of conflict, to terrorists, to international criminal organizations, and to drug traffickers. Programs to implement this prong of the policy range from criminal prosecutions and law enforcement actions to end-use monitoring and training programs for industry compliance. This is the most complex aspect of the policy and as shown in Table 1, responsibility for implementation is shared by five key agencies.

Department	Agency	Primary Role in Curbing Unauthorized Transfers
Homeland Security	ICE	Law enforcement
Justice	ATF, FBI	Law enforcement and weapons tracing
	DDTC	Vet government transfers; screen license applications for commercial sales; administer Blue Lantern program, collaborate with ICE, ATF
Commerce	BIS	Maintains black lists and other checklists
Defense	DSCA	Oversee end-use documentation and Golden Sentry program

Most of the illegal traffic in weapons across US borders is in the outbound direction. Although US Customs and Border Patrol have occasionally intercepted small arms at or near import checkpoints,<sup>19</sup> the most serious concern extends from military weapons and defense articles procured in the US or US territories and intended for illegal export abroad. Agents with the Federal Bureau of Investigation (FBI), the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) and the new Immigration Customs Enforcement Agency (ICE) housed in the Department of Homeland Security regularly intercept and prosecute arms deals involving light weapons. In 2006, for example, ICE agents foiled a plot to export scores of state-of-the-art firearms, machine guns, sniper rifles and surface-to-air missiles to Tamil Tigers in Sri Lanka.<sup>20</sup> Illicit commodities are often trafficked together, and it is not unusual for enforcement actions to draw in agencies that are not usually responsible for arms trafficking cases, such as the Drug Enforcement Administration (DEA).<sup>21</sup> In some cases, the ATF's National Tracing Center may also be asked to assist with international criminal investigations through crime gun analysis and its ability to track the movement of US-origin firearms.<sup>22</sup> Over a two-year period in the late 1990's, more than 150 cases investigated by ATF involved international small arms trafficking.<sup>23</sup> The law enforcement powers of these various agencies are supplemented by the Treasury Department's Office of Foreign Assets Control, which has authority under the Emergency Economic Powers Act to freeze foreign assets under US jurisdiction. In April 2005, for example, OFAC froze the assets of four individuals and 30 companies linked to Russian arms trafficker Victor Bout.<sup>24</sup>

In addition to enforcement mechanisms designed to stop criminal activity, the US has developed programs to survey and track legitimate end-use of defense items sold under commercial contract or supplied directly through government-to-government deals. Statutes impose constraints on both the immediate end-user and eventual re-transfer of items on the Munitions List, and if sufficient warning signs are triggered, transactions may be subject to close scrutiny and sanction. Since 1990 the DDTC has run an inspection program for commercial sales known as Blue Lantern,<sup>25</sup> and in 2001, after a highly critical report from the US General Accounting Office prompted Congressional intervention,<sup>26</sup> the Department of Defense launched a similar program, dubbed Golden Sentry. Although neither program focuses primarily on small arms, the Blue Lantern program is required by statute to include among its priorities weapons that can be easily diverted, and Golden Sentry includes surveillance of shoulder-fired Stingers.<sup>27</sup> From 2002-2004, Blue Lantern checks resulted in 52 unfavorable "determinations" involving small arms. A full 80% of these incidents concerned arms destined for Latin American countries--with Bolivia heading the list--but clients in Switzerland, UK, Canada and Israel were also found suspect.<sup>28</sup> The Blue Lantern program rarely investigates more than 1% of all commercial transactions,<sup>29</sup> but well publicized and specific results have earned it considerable respect abroad.<sup>30</sup> In some cases, DDTC inquiries have led importing countries to impose their own sanctions or restrictions.<sup>31</sup>

Enforcement efforts and dramatic arrests naturally draw the most attention, but to curb black market activity, the US actually places greatest emphasis on preventive actions and voluntary compliance. As both a punitive measure and a preventive tool to discourage illicit deals, agencies within the State Department and Commerce Department collaborate to maintain and publicize lists of parties who are debarred or otherwise restricted from trade in defense or dual-use commodities. The DDTC screens export license applications against a watchlist that in 2006 included more than 130,000 foreign and domestic individuals and companies, and it also maintains a publicly accessible list of embargoed countries.<sup>32</sup> The Commerce Department's Bureau of Industry and Security (BIS) gathers in one site a set of six lists for exporters to check to ensure that their transactions do not include parties debarred under ITAR provisions or are otherwise restricted from the trade in defense or dual-use commodities.<sup>33</sup>

## 2. Trade Promotion

US policy balances efforts to curtail illicit trade with commitment to support and facilitate lawful exports. Government agencies advertise their commitment to assist legitimate transactions even as they threaten punishment for those who transgress the law. Both DDTC (State) and BIS (Commerce) run periodic seminars to present and explain regulations and processes, and they provide on-line services to facilitate legitimate business transactions.<sup>34</sup> Grimmatt identifies this aspect of their work as a second element in the multi-pronged policy and describes it as an effort to “streamline and strengthen US export procedures to improve accountability without interfering with the legal trade in and transfer of arms.”<sup>35</sup>

Although small arms represents but a fraction of the \$20 billion US commercial weapons trade, the US remains the world’s largest exporter of firearms.<sup>36</sup> In 2006, some 66,000 requests for commercial export licenses of defense articles were processed, up 8% from the previous year,<sup>37</sup> and licenses were granted for sales of small arms and light weaponry to 112 countries.<sup>38</sup> Industry complaints about bureaucracy and red tape are common, and industry strategists have judged the moment opportune to lobby for export control reforms. In March 2007 eight trade organizations launched a campaign to make the export controls more “efficient, predictable, and transparent,”<sup>39</sup> but it is unclear how many of their proposals, if enacted, would affect the export of small arms and light weapons.<sup>40</sup> It appears that industry’s most common—and controversial—complaints are in regard to large and high-value weapons systems and dual use items.

US military and diplomatic personnel are prohibited from encouraging or influencing the purchase of US-made military equipment unless they are specifically instructed to do so by the Administration,<sup>41</sup> but as a practical matter, the US arms industry, including small arms suppliers, benefits from Pentagon promotion. The Pentagon represents US weapons at arms shows around the world<sup>42</sup> and small arms and light weapons are sometimes included in package deals arranged through the Foreign Military Sales program.<sup>43</sup> In addition, the Department of Defense facilitates the acquisition of weapons through various grant programs, including most recently supplies to Iraq and Afghanistan.<sup>44</sup> Some of these transfers may involve weapons held in US stock, others have been procured for supply via contract.

## 3. Raising Standards Internationally

Efforts to raise the arms export standards of other nations represent a third prong in the policy as described by Grimmatt. The US has indeed initiated and participated in many efforts to enhance arms export standards worldwide, but it should be noted at the outset that this aspect of US policy is highly nuanced, and it is the area where differences between the Clinton and Bush administrations are most apparent.

In the late 1990’s, the US exercised considerable leadership to bring international attention to the growing problem of small arms proliferation. Grimmatt cites the 1997 Inter-American Convention Against the Illicit Trafficking in Firearms and a 1999 “Statement of Common Principles on Small Arms and Light Weapons” signed by the US and EU as examples of steps taken by the US to advance its policy goals. The US joined consensus in approving the text of the UN Firearms Protocol in 2001,<sup>45</sup> and it is also party to the Organization for Security and Cooperation in Europe (OSCE) and the Wassenaar Arrangement. Both of these organizations have adopted best practice standards on export controls. (These standards include human rights considerations as well as security concerns, including potential diversion for terrorism or crime, and closely mirror provisions of formal US policy.<sup>46</sup>) In 2003 Wassenaar partners toughened guidelines on handling MANPADS, and the US has energetically supported that initiative.<sup>47</sup>

Such engagements notwithstanding, US commitment to international initiatives over the past six years has been diffident at best. With the exception of MANPADS control, an area of keen interest to the White House since the attack on an Israeli airliner in Kenyan airspace

in 2002,<sup>48</sup> the Bush Administration has downplayed multilateral aspects of US efforts to enhance export standards. The Inter-American Convention was signed in 1998, but has not been prioritized for Senate ratification. The UN Firearms Protocol has been neither signed nor ratified, though the US completed ratification of the parent Convention on Transnational Organized Crime and two other protocols unrelated to arms in 2005.<sup>49</sup> (Both instruments have acquired sufficient number of state ratifications to enter force of international law.) The US has also taken steps to impede further normative developments. In January 2005 the US blocked efforts to make an international instrument on marking and tracing small arms legally binding, and a year later it issued stern cautions about moving toward a legal protocol on brokering.<sup>50</sup> (Ironically, in 2001 the US had asserted that brokering was an issue “at the very heart of the illicit weapons trade” and urged the world community to take up the model brokering regulations it had introduced.) And, as noted early in this article, the US cast the lone vote opposing the 2006 UN decision to commence work on an Arms Trade Treaty.

In addition to backpedaling on substantive issues and legal initiatives, the US has publicly signaled its disinterest in normative efforts through behavior in diplomatic forums. Most noticeably, official spokespersons have taken to emphasizing US non-negotiables, and very often these “redlines” overshadow any positive contribution or initiative backed by the US. Decisions about leadership and composition of delegations to international meetings also appear to reflect reordered priorities. The 2006 UN delegation to the small arms Review Conference, for example, was headed by the Director of the Weapons Removal and Abatement Office in the State Department’s Bureau of Political and Military Affairs, rather than a senior official from a more central policy unit in the Department,<sup>51</sup> and it included several citizens prominently connected to the National Rifle Association.

This public (and much noticed) signaling, however, appears to relay only part of the story. Further away from public scrutiny, bureaucrats in various agencies have engaged in transnational conversations of a technical nature and assist other countries’ efforts to meet international standards. The BIS (Commerce Department), for example, has worked with some 20 countries to improve export controls on commercial items.<sup>52</sup> In the State Department a program known as Export Control and Related Border Security Assistance and housed in the Office of Export Control Cooperation (ECC) is advertised as the US Government’s “premier initiative to help other countries improve their export control systems.”<sup>53</sup> Since 1999 the ECC and other US agencies have actively participated in the “unrestricted discussion and debate” that takes place at annual international conferences on export controls.<sup>54</sup> Furthermore, regulations developed by the BIS adhere to OAS standards, even though these have not been formally adopted by the US.<sup>55</sup> Despite its public signaling at high profile international meetings, it would seem, US policy takes account of international commitments as well as national interests.

#### 4. Destruction of Excess Weapons

As a final element of the multi-pronged policy, Grimmatt calls Congressional attention to US efforts to support the destruction of excess stockpiles of small arms, particularly in regions where conflicts have ended.<sup>56</sup> The State Department’s Office of Weapons Removal and Abatement (WRA) is dedicated to this function, and over the past several years has negotiated arrangements to destroy more than 18,500 MANPADS, many of them old and obsolete by contemporary military standards, but dangerous nevertheless.<sup>57</sup> The destruction of excess weapons is generally carried out by the Defense Department’s Defense Threat Reduction Agency (DTRA), which was the only government agency to promote its activities in the “NGO Hall” at the United Nations’ 2006 conference on small arms. WRA’s outreach to the small arms community includes publication of a periodic newsletter *Safe Passages*, building public-private partnerships, and offering grants for de-mining and efforts to design programs for small arms destruction. Assistance available to countries that request it via

DTRA's program of stockpile management consists of three steps – an assessment visit, recommendations to improve stockpile security, and destruction – all carried out by DTRA teams. DTRA has worked in more than 25 countries.<sup>58</sup> In recent years, the budget for this program has been very modest, averaging \$2-8 million since 2001. In 2008, however, the Bush Administration has requested \$44.7 million for overseas small arms stockpile reduction, intended primarily for MANPADS destruction.<sup>59</sup>

The details included in this overview of US small arms policy and programs emphasize the complexity and comprehensiveness of the US approach to controlling and regulating small arms proliferation. US policy is admirably robust and projects a responsible and conscientious approach to handling the supply of lethal weapons. Policy implementation relies on several legal statutes and an elaborate regulatory mechanism, which in one way or another engages 20 separate federal agencies and offices. An analysis of performance against policy could reveal numerous shortcomings, but there can be little doubt about the US government's commitment at the level of policy. As argued in the following section, however, the trouble is that this account represents only part of the picture, and the most favorable part at that.

### The Shadow Side of Policy

As comprehensive as it appears to be, the presentation of US small arms transfer policy publicized by State Department websites is incomplete. What is missing? In a nutshell, the policy outlined above excludes discussion of lawful but covert, undisclosed, incompletely monitored or unregistered transfers. Weapons supplied under the terms of what can be called a "shadow policy" account for a fraction of all US weapons transfers, but in the context of the War on Terror they have come to represent a substantial portion of the US transfers of small arms and light weapons. Based on the US government's own reports, the value of unregistered small arms and light weapons supplied to Iraq alone during the 2003-2005 period exceeds the value of all such weapons transferred through foreign military sales from 1997-2002.<sup>60</sup> Because these weapons are so easily diverted to the black market they represent some of the most problematic weapons in circulation. They also give rise to the most serious contradictions in US small arms policy.

Analysts and small arms control advocates have wrestled with the knotty question of how to describe and assess transfers that do not seem to fit within the bounds of the publicly espoused policy. Covert transactions of questionable nature are sometimes called "gray market transfers" and considered illicit at best. (See box.) Other transactions – such as the weapons recently procured for Iraq—are not clandestine but nevertheless appear to fall outside common categories of grant or sale. Discussions and analyses that treat such transactions as exceptional or illicit are problematic inasmuch as they imply that some transfers are not covered by law or policy. In fact, the covert and unsupervised supply of weapons is not an exception to US policy; over the past sixty years it has been an integral component of the policy. Excluding such transactions from analysis, or treating them as a category apart, deflects attention from the laws, oversight mechanisms, and programs that constitute a crucial element of US small arms transfer policy. To complete the analysis of existing policy, a fifth prong, acknowledging shadow transfers, must be added to the framework outlined in the 2006 CRS report.

As with other aspects of US policy, the shadow policy on small arms is shaped by law, implemented through government programs, and subject to Congressional budget approval and oversight. As already noted, the most robust and stringent provisions of law apply to commercial transactions vetted and approved through the State Department and the Department of Commerce. Shadow transactions are generally completed under other legal provisions, in particular the Foreign Assistance Act (FAA) and the 1947 National Security Act. The FAA

establishes the legal framework for weapons furnished to other countries on a grant basis. It also provides the president with authority to draw down US defense stocks on an emergency basis, including weapons acquired abroad, for antiterrorism assistance, narcotics control and other designated purposes. In theory, all US government transfers, whether accomplished by grant or by sale, are subject to statutes that require assurance that the recipient will use the weapons only for intended purpose, and that subsequent transfer or resale of the weapons is contingent on US approval. In the past, such transfers—overseen by the Department of State—were considered to receive considerable scrutiny. In current practice, however, some weapons supplied via grant programs may be subject to minimal or no scrutiny, particularly if the weapons in question are not US-manufactured. DoD procedures, as a case in point, assert continuing US responsibility for the proper use of weapons provided to other countries, but only if they are of US-origin.<sup>61</sup> As discussed below, programs authorized via the mechanism of national defense and emergency supplemental authorization bills in the aftermath of September 11 also lend themselves to shadow transfers, in part via provisions that suspend constraints imposed by the FAA.

Covert actions provide a separate legal channel for shadow transfers. The statutory underpinnings for such operations, including weapons transfers, are found in the National Security Act, incorporated into Title 50 of the US Code under the heading of War and National Defense. (The Arms Export Control Act and the Foreign Assistance Act, by contrast, are included in Title 22, Foreign Relations.) Title 50 provisions make it lawful for the US Government to engage in activities “to influence political, economic, or military conditions abroad, where it is intended that the role of the United States Government will not be apparent or acknowledged publicly” and distinguishes such actions from traditional law enforcement, intelligence and military activities, and from traditional diplomatic practice. Sub-chapter III (§415) of Title 50 anticipates that some of these activities may involve transfer of “defense articles and defense services” as defined by the US Munitions List. As noted above, this list includes virtually all small arms and light weapons.

The 1947 statute has periodically been modified, and a US president authorizing a covert operation today must be mindful of several constraints. Most importantly, actions cannot be taken in violation of the US Constitution, US statutes or express Congressional prohibition. Since 1974 the president has been formally required to report all covert operations to Congress; since 1991 he has been required to issue a written “finding” confirming that each such operation is necessary to support identifiable foreign policy objectives and is important to the national security.<sup>62</sup> The law further stipulates that all intelligence agencies involved in a planned action must be identified, and Congress must be informed before the intended action commences.

Anecdotal evidence suggests that strict legal requirements may have resulted in fewer formally declared covert actions, but not necessarily fewer transactions in the shadows.<sup>63</sup> After consulting with State Department lawyers about the finer points of law in his efforts to find means of supplying weapons to the Bosnians, US diplomat Richard Holbrooke is reported to have summarized the constraints as a progression:

...[S]uggesting to a foreign country that it might consider a covert action appeared perfectly legal; going one step further and *encouraging* a foreign country appeared legal but potentially risky from a political standpoint. Actually *supporting* the foreign action through direct participation, the reports said, crosses the line into covert action. [Italics added for emphasis.]<sup>64</sup>

The legal reforms seem principally to have inspired clever interpretations and innovative policy “workarounds.”

In any event, the legal constraints appear not to have had great practical or political effect. Not only are numerous workarounds available to a determined president or his aides, but Congressional commitment to oversight has been ambivalent, at very least. In the first place, Congressional authority is limited. Statutes (enacted by Congress) entitle the legislature to appropriate information but they also assert very clearly that covert actions are not subject to

Congressional approval. Secondly, Congress has not found political will to impose meaningful constraints on the executive. In the face of executive excess, Congress has episodically expressed outrage and threatened to exercise muscle, but for the most part legislators have appeared content to settle for inclusion in the information loop via select committees on intelligence. These committees steward Congress' statutory right to be notified when defense items with aggregate value in excess of \$1 million are transferred beyond control of the US government by any intelligence agency in a given fiscal year. It is unclear, though, whether such oversight authority or potentially significant budget authority results in fewer arms transfers. In some cases it may be that consultations with Congress (or even the specter of consultations with Congress) work to cancel or curtail ill-advised plans.<sup>65</sup> In other cases, members of Congress may actually use their authority and privileged knowledge to increase authorized funding for arms transfers. Such was the case with Charlie Wilson (D-Texas), who infamously used his powers as a member of the Appropriations Defense Sub-Committee to significantly augment funds for covert small arms transfers to Afghanistan. Less subtly, Congress in 1994 specifically instructed the US government not to enforce an arms embargo on Bosnia. In 1998 it went yet further, authorizing nearly \$100 million in military assistance (including weapons) to bolster a flagging White House initiative to assist Iraqi dissidents in their efforts to remove Saddam Hussein from power in Iraq.<sup>66</sup>

The instruments used by the US to implement the shadow policy have evolved considerably over the past six decades. During the height of the Cold War, the US depended primarily on the Central Intelligence Agency to carry out covert actions, including provision of weapons and the money to procure them. After a number of failed operations and Congressional inquiries in the 1970's, however, covert operations were made subject to somewhat greater scrutiny and became more cumbersome as a tool of secretive presidential policy. The complexity of the US intelligence community—today comprised of sixteen separate agencies—now offers the executive some choice in carrying out shadow operations, including secret arms transfers. While the CIA remains the best known of the intelligence agencies, the Pentagon currently has a much more extensive intelligence network and today accounts for the great bulk of national intelligence funding.<sup>67</sup>

Over time, Presidents and their advisors have been inventive in their use of government resources and agencies, as well as outside actors, to deliver various aspects of the shadow policy. To stay within the bounds of law (and circumvent Congress), for example, the Reagan Administration turned to members of its National Security Council to carry out the Iran Contra project—which involved surreptitious supply of weapons to *both* Iran and the Nicaraguan Contras. Although the Boland Amendment explicitly forbid using appropriated funds and engaging US intelligence agencies to overthrow the Nicaraguan government, NSC conspirators secretly sold US weapons to Iran and diverted the proceeds to arm the Contras.<sup>68</sup> In the same period, the US persuaded Saudi Arabia to pay for millions of AK-47 assault rifles and other light weapons to be channeled to the Afghan *mujahideen* through Pakistani intelligence services.<sup>69</sup> During the 1990's covert supplies to Bosnia-Herzegovina appear to have involved the US Air Force in some measure, and possibly US Special Forces under control of the Pentagon. According to the Dutch government's 2002 report on the massacre at Srebrenica, it is not clear what nation's pilots flew the Hercules C-130 cargo planes that ferried ammunition, machine guns, Stingers and other light weaponry on "black flights to Tuzla" in clear violation of a UN arms embargo, but the success of those flights definitely required aversion of AWAC surveillance under US control.<sup>70</sup> Ten years later, Bosnia was faced with the challenge of disposing of its wartime stocks of light weaponry, and recent reports from Amnesty International suggest that at least some of them were authorized by US military officers serving under NATO auspices for transfer to Rwanda and Iraq.<sup>71</sup> Yet more recently, questions have been raised about US covert activities in Somalia, under a UN arms embargo since 1992. Sizable payments by CIA agents to Somali warlords in exchange for information about Al Qaeda operatives are thought to have

financed illicit weapons that fueled open hostilities in 2006.<sup>72</sup> Stories circulating in 2007 further suggest that the US with Saudi Arabia has clandestinely armed Fatah al-Islam in Lebanon.<sup>73</sup>

As intimated, the features of a shadow transfer may vary according to circumstances. Some involve covert operations; some do not. Several programs created in conjunction with the war on terror appear to lend themselves to shadow transfers even if they do not extend from formally declared covert operations. The first is a military training program known as “Section 1206” training, which permits the Pentagon to train and equip foreign military personnel without going through the State Department’s normal screening procedures.<sup>74</sup> As detailed in administration budget requests, the “Global Train and Equip” program includes the supply of small arms and light weapons to partners in the war on terror whose human rights record, risks for diversion, or other concerns might make them ineligible for assistance under the Conventional Arms Transfer guidelines.<sup>75</sup> Given the attenuation of normal State Department vetting procedures and limited opportunity for Congressional review, it is doubtful that such transfers are subject to the full set of cradle-to-grave oversight measures outlined in the principled policy. It is even less likely that accountability is established for any weapons transferred or purchased under the authority of a second program, known as Coalition Support Funds. This military aid program works on a cash basis to reimburse coalition partners for outlays related to their counterterrorist operations as well as for military support in Iraq and Afghanistan, including ammunition as well as fuel, security and airlift. Pakistan, Poland, Jordan, Afghanistan, Uzbekistan, Georgia, Ukraine, Czech Republic, and Djibouti are among the countries that have benefited from this program.<sup>76</sup> It is doubtful that weapons air-lifted by the US military and CIA to various anti-Taliban troops in Afghanistan in the fall of 2001 were subject to the most robust provisions of the small arms transfer policy, and reports suggest that President Bush may have authorized a covert action to bypass requirements associated with more public forms of military assistance.<sup>77</sup> In the intervening years, though, several programs openly authorizing transfer of defense articles to Iraqi and Afghan security forces also appear to bypass the most stringent requirements of formal policy,<sup>78</sup> especially where non-US weapons may be involved.

In fact, over the past several decades numerous transfers have involved supply of defense articles that cannot be identified as American weapons. During the Cold War years, there were several reasons not to want such weapons traced back to the US. In the early 1960’s, for example, the US wanted to hide its involvement in the Angolan nationalist struggle from Portuguese colonial rulers (and NATO ally) and so disguised the provenance of financial support and arms supplied to Holden Roberto.<sup>79</sup> Stockpiles of weapons acquired during the Vietnam war facilitated clandestine and disguised transfers, but the US also procured AK-47’s from Egypt for use in Afghanistan and Iran-Contra conspirators went to some lengths to procure Chinese MANPADS for supply to Nicaragua.<sup>80</sup> Since 2003 the US has supplied more than 200,000 Soviet-style light weapons to Iraq through a grant program,<sup>81</sup> but that choice is presumably motivated by various practicalities, including the desire to provide weapons that are familiar or can be acquired cheaply.

In this analysis I have treated shadow transfers as a residual category. In some way or another, all shadow transactions fall outside the bounds of requirements codified in the arms export or foreign assistance laws. In some cases these transfers are made public, but they are excused from the most rigorous requirement of law, including “cradle to grave” surveillance. Most shadow transfers additionally share a marked lack of transparency --which, of course, makes the US rating on the SAS Transparency Barometer especially ironic. Details about particular supply operations are held tightly, even if the transfer itself complies with American law. Information is not always shared with the public (indeed, emergent information may be denied), and in some cases pertinent details may be withheld from most members of Congress as well. Presidential directives are usually classified documents, and Intelligence Committees in the Senate and the House are not at liberty to discuss information shared with them *in camera*.



Whether such opacity is motivated by political discretion or expediency, its natural effect is to limit accountability on the receiving end. US statutes require proper end-use certification and secure stockpiling as a pre-condition for the supply of weapons by grant or sale alike, but it is difficult to see how such assurances can be offered when the transfer itself takes place in the shadows. It is unclear, for example, whether weapons recently supplied to Afghanistan under presidential drawdown authority have, as a matter of policy implementation, been processed to provide required assurances about end-use and retransfer.<sup>82</sup> In 2005 a NATO official interviewed by Amnesty International described massive arms shipments from Bosnia, while the Stabilization Force (SFOR) was under US command. The official told AI that “NATO has no way of monitoring the shipments once they leave Bosnia [and] there is no tracking mechanism to ensure they do not fall into the wrong hands.”<sup>83</sup> The weapons in question were apparently destined for Iraq and may well have been some of the same weapons transfers for which accountability was found wanting by the US Special Inspector General for Iraq Reconstruction.<sup>84</sup> These transfers to Iraq can hardly be considered covert operations, yet they seem not to be covered by the “principled policy” and in the details they are as opaque as other shadow transactions.

### Observations and Recommendations

A comprehensive view of US small arms policy that incorporates both the principled approach and the shadow policy helps explain contradictions like those presented at the outset of this article. While the US has embraced and actively promotes high standards of accountability for weapons openly supplied, it is apparently wary of a global agreement to make all transfers equally transparent. Such an agreement would effectively override and countermand the shadow policy. The historical reliance on back channel arrangements for delivering weapons under the shadow policy feeds a casual attitude toward some transfers, which sheds light on the stunning lack of accountability for weapons supplied to Iraq as reported by the Inspector General. And it helps explain the Pentagon’s reluctance to answer questions in 2004 about its probable use of planes owned by Victor Bout to drop supplies in Afghanistan and Iraq, though just a year later OFAC froze the notorious trafficker’s assets and banned any American firm from business transactions with him.<sup>85</sup>

What at first appears to be policy contradictions or performance failures are in fact manifestations of the dual tracks of US small arms policy. Recognizing, and acknowledging, both aspects of US policy helps explain the contradictions, but it doesn’t solve attendant problems. Thousands of the some 3 million AK-47 assault rifles that the US supplied to Afghan *mujahideen* in the 1980’s continue to circulate in arms markets in South Asia, Kashmir, Southeast Asia and the Middle East.<sup>86</sup> According to Boutwell and Klare, most of these weapons were made in Egypt or the Soviet Union. Weapons provided by the US to Central America in the same period continue to stock today’s Latin American black market.<sup>87</sup>

The shadow policy originated in the Cold War era, at a time when the US regularly sought to disguise its involvement in the internal politics of other countries. How well it served US interests in earlier decades is open to debate, but its current costs are apparent. Directly and indirectly, clandestinely-supplied weapons work deleterious effects on fragile peace in the world’s most politically precarious places. The crucial problem is that these weapons are easily diverted into the black market, and the shadowy supply networks that profit from such trade erode the governance capacity of states already weak. Indeed, the ready availability of illicit weapons threatens the ability of many states to maintain even titular monopoly on the use of force, a defining feature of the modern state.

The costs of over-supply of small arms and light weapons are generally charged to people who have the misfortune of living in war zones, or to the amorphous account of “global security.” But the shadow policy also exacts cost from the US. The very existence of a shadow policy undermines the efforts of US arms export officials to promote “best practice” standards that

emphasize a broad national commitment to comprehensive, enforceable controls.<sup>88</sup> The US has made extensive investment in its own formal export control system and is rightly proud of it – but the principles that make it a “gold standard” are undermined at every turn by the continued existence and operation of the shadow policy. More pointedly, the shadow policy undermines the credibility of the US’ publicly espoused policy, raising difficult questions about the US’ own commitment to the principles it promotes.

The US could address this problem and resolve the most troubling contradictions in its current policy by pledging not to supply weapons that cannot be traced back to the US, as its European partners appear willing to do. The US policy on conventional arms transfers requires consideration of the recipient country’s record on human rights, terrorism, and proliferation, as well as the potential for misuse or diversion before an arms sale can be approved.<sup>89</sup> Those same standards should apply, whatever avenue is used for an arms transfer. As a matter of overarching principle, the US should not supply weapons to any party for whose use it is unwilling to accept responsibility. This principle is already implied in statutory provisions that require end-use certification and retransfer agreement for openly supplied weapons, and it is explicitly stated in DoD procedures for handling US-originated materiel.<sup>90</sup> It should be extended to the supply of all weapons lawfully provided by or through the US, and to that end, unequivocal language asserting this principle should be inserted into all the relevant statutes, including the 1947 National Security Act as well as the Arms Export Control Act and the Foreign Assistance Act.

Human rights advocates concerned about the effects of US arms transfers on human rights and human security would do well to focus on and publicize the discrepancies between aspects of the arms transfer policy that are publicly advertised, and those kept in the shadows. In particular, attention should be drawn to provisions of the law, implementing regulations, and programs that allow any weapons transactions to escape the most robust standards of accountability and broadest interpretations of US statutes on arms transfers. This includes arms transfers associated with covert actions, but it also relates to growing reliance on Pentagon-directed programs that downplay or circumvent human rights considerations, and to Defense Authorization legislation that fails to ensure intended end-use and limit re-transfer options. Where full accountability is not established, the risk of diversion into black market can be very high, and the probability that weapons will be used to the detriment of human rights and welfare is increased. Any eventual normative agreement on arms supply must be applicable to *all* transfers. Otherwise, it will have little purpose or effect.

Although the small arms issue is regularly sidelined by the drama of nuclear proliferation and the hard reality of improvised bombs in Iraq, the threats and challenges it poses remain very real. Over the last several decades the number of small arms manufacturers and exporting states has increased dramatically, adding a new layer of complexity to the international arms bazaar. In the meantime, these arms remain the weapons of choice and convenience in low-intensity conflicts that large powers try to control with low-cost solutions. Warlords, insurgents, and government-sponsored militia in Sudan and Somalia have had little difficulty acquiring weapons, despite imposition of a mandatory UN arms embargo. The continued supply of arms into these troubled areas not only fuels the conflicts, but also jeopardizes the mission of peacekeepers and relief workers. There are few prospects for better compliance without strong commitment from powerful states.

Continued reliance on an arms transfer shadow policy belies such commitment. Efforts to refit the Cold War policy as a tool against terror are misguided and will likely be regretted at some point in the not-far-off future. What is true for MANPADS is true for other small arms and crew-based weapons: the unmonitored supply of these weapons is dangerous and risky business. The US should be strengthening its commitment to a policy based on principles and exercising vigilance to ensure it is not undermined. US principles already inform the best practice on small arms transfer standards in such international organizations as the Wassenaar Arrangement and the OSCE. What remains is for US to make a commitment that *all* of its transfers will be subject to

these same high standards. Until it does so, it is in poor position to criticize the parties who break UN arms embargoes, or who divert weapons to the black market. Indeed, the US' current dual-track policy provides political license to other states inclined to make irresponsible or clandestine transfers—of MANPADS as well as other light weaponry. If the US is not prepared to amend its own policy, it can hardly claim the high ground vis-à-vis states who clandestinely supply weapons in pursuit of their own mercantile or ideological interests.

## Gray Market Transfers and US Policy

### Defining Terms

“Gray market” is a term often used to describe covert transactions and other weapons transfers that are not fully compliant with the law, but that are not blatantly illegal, either. Such transfers are commonly compared to and contrasted with black market transactions, clearly and indisputably outside the bounds of law. “Gray market” is an evocative term, but its usefulness in discussions about policy has been compromised by different understandings of its meaning.

Consider the differences among these approaches:

*“Gray market is when a product is legally exported and ends up being diverted “* Richard Mercier, US Customs Service (1994)

*“Gray arms’ refers to the use of fraudulent export documentation to acquire defense articles through legitimate channels for re-transfer to unauthorized end-users.”* DDTTC, US State Department (annually)

*“Transfers by governments, their agents, or individuals exploiting loopholes or intentionally circumventing national and/or international laws or policies.”* -- Small Arms Survey, 2001.

*“Transfers distinguished by their violation of national and international norms and policies, if not laws; may encompass a wide variety of semi-legal and questionable activities.”* -- Michael Klare, 1997

*“The state-sponsored gray market...has its own characteristics...that include: transfer of nonstandard weapons, reliance on intermediary suppliers [and shipping arrangements]..* – Karp, 1994

There is general agreement that gray market transactions are “illicit.” However, there is no agreement on this term, either. (But the disagreements are not merely semantic: In 2001 the UN agreed to confine its discussion of small arms to the “illicit trade in all its aspects.” The definition of *illicit* thus became a matter of consequence.

The definitional differences turn on two pivotal issues. One relates to legal constraints. The other concerns the parties involved.

The role of government. The definition used by US government sources suggests that private individuals or other (non-US) government officials are responsible for gray-market transactions. Independent analysts and NGO’s ascribe responsibility to governments or their agents – including the US.

Whose law? US government officials are oriented to US law. If a US-originated transaction complies with US statutes, it is considered licit by government officials, even if covert. The definitions used by independent analysts and NGO’s tend to impose higher standards, considering as licit only those transactions that conform to national laws of *both* exporting and importing countries, as well as to international law. By this definition, illicit (or “gray market”) transactions would include transfers in violation of an international arms embargo, clandestine transfers to non-governmental actors, or any unauthorized import into a country.

(Continued, next page)

**Does the US regularly engage in “gray market” transfers?** To some extent the answer depends on what definitions of “gray market” and “illicit” are employed.

The US certainly does engage in covert transfers—and during the 1970’s and 80’s it did so to the extent that through clandestine channels it became a major weapons supplier to insurgent groups around the world (Lumpe, 1997). Were these “gray market” transfers, though? Most of them were not intended to *circumvent* US policy as the broad definitions of gray market would imply, but to *implement* it.

A quick review of the Iran-Contra deal of 1985-86 points up the issues. Iran –Contra is the best known example of a US-supported covert arms transfer, and it happens to fit well within the broad definition of gray market transfer. The exception features of this deal, however, illustrate the limitations of a definition that stresses practices of questionable legality. Unlike other covert arms deals, Iran-Contra involved deliberate contravention of US law. The foreign policy venture in which it was rooted, however, remained comfortably within bounds of US law.

In the context of a larger commitment to weaken the Soviet Union by providing material support to anti-Soviet insurgents around the world, Ronald Reagan in 1981 issued a classified presidential finding authorizing CIA operations to subvert efforts and activities by Cubans, Sandinistas, and Soviets in Central America. At that point, Congressional intelligence committees were duly informed. The US rapidly developed a monumental covert operation in Central America, and covert aid began to pour into Nicaragua in support of the anti-Sandinista *contrarrevolucionarios* (Contras). As public opposition to the operation mounted, however, Congress took steps to limit US engagement. A series of four legislative initiatives, the Boland Amendments, were enacted to limit presidential prerogative, explicitly prohibiting use of appropriated funds and engagement of US intelligence agencies for the purpose of overthrowing the Nicaraguan government.

It was to circumvent these legal constraints that the Reagan White House crafted the deal known as Iran Contra. In essence, funds were generated from independent sources to carry out a policy that Congress had explicitly disapproved, and about which Congress would not be informed. Rather than the normal budgetary spigots (which Congress had turned off), funds to support the Contras were collected from the governments of Saudi Arabia, Israel and Taiwan, from private US citizens, and from proceeds diverted from the sale of weapons from US arsenals. Several tons of Soviet-type munitions were secretly procured, and a deal was cut with the Chinese to supply SA-7 MANPADS (Klare and Andersen, 1996, and Parry, 2000). Working around the Boland Amendments, the secret plan was carried out by members of the National Security Council, rather than the CIA or other intelligence agencies. The conspiracy came to light only after a supply plane was brought down by Sandinistas in October 1986. It resulted in a much-protracted Congressional investigation and appointment of an independent counsel to pursue prosecutions.

Unlike other covert operations and arms transfers under the aegis of the Reagan Doctrine, the materiel covertly provided to the contras had been specifically proscribed, so was in direct violation of the law. As Independent Counsel Lawrence Walsh later put it, the essence of the crime was deceit of Congress (Walsh, 1994). Congress did not grapple with policy questions about covert arms transfers, either in the context of Iran-Contra or in the intervening years.

No other shadow transfer discussed in this paper has been in violation of *US law*, though several have openly transgressed *international* laws and norms.

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Directorate of Defense Trade Controls, US Department of State. (FY Annual reports.) “End-Use Monitoring of Defense Articles and Defense Services, Commercial Exports” .

Lumpe, Lora. 1997. “US Policy on Small/Light Weapons Exports,” <http://www.fas.org/asmp/library/reports/AAAS.htm>.

Karp, Aaron. 1994. “The Rise of Black and Gray Markets,” *Annals, American Academy of Political and Social Science*, v. 539.

Klare, Michael. 1997. “The Subterranean Arms Trade,” in *Cascade of Arms*, edited by Andrew J. Pierre (Brookings).

Klare, Michael and Andersen, David. 1996. *A Scourge of Guns* (Federation of American Scientists).

Parry, Robert. 2000. “Iran-Contra and Wen Ho Lee,” <http://www.consortiumnews.com>.

Walsh, Lawrence E. 1994. *Iran-Contra: The Final Report* (Random House).

<sup>1</sup> The Uppsala UCDB database records more than 120 conflicts between 1989 and 2006.

<sup>2</sup> Like most other Latin American countries today, Colombia has a small arms manufacturing sector that produces an extensive range of weapons. Small Arms Survey 2005: Weapons at War (Oxford, UK: Oxford University Press, 2005, pp. 47-58

<sup>3</sup> John Hillen, "Small Arms, Big Danger," originally published in the Baltimore Sun, July 3, 2006 <http://www.state.gov/t/pm/rls/rm/68535.htm>.

<sup>4</sup> Amnesty International, "Democratic Republic of Congo: Arming the East," AFR/62/006/2005 (July 2005).

<sup>5</sup> Office of the Special Inspector General for Iraq Reconstruction, "Iraqi Security Forces: Weapons Provided by the U.S. Department of Defense Using the Iraq Relief and Reconstruction Fund," SIGIR-060033, October 28, 2006.

<sup>6</sup> See US Conventional Arms Trade Policy (CAT) at <http://www.state.gov/t/pm/rsat/c14023.htm>, announced by the White House in February 1995, "New U.S. Conventional Arms Transfer Policy." This policy proclamation replaces a similar statement issued by the Reagan Administration [<http://dsca.osd.mil/PressReleases/ARMSTRAN95.htm>]. The commitment to "restraint" did not originate with this White House document, however. Congressional admonitions for restraint in arms transfers can be traced back several decades. A "sense of the Congress" resolution calling for restraint in arms sales to Sub-Saharan Africa has been embedded in the US Code, 22 U.S.C. §2773. Also see <http://thomas.loc.gov/cgi-bin/bdquery/z?d095:SN03075:@@D&summ2=m&>

<sup>7</sup> "The U.S. Approach to Combating the Spread of Small Arms," June 2, 2001

<http://www.state.gov/t/pm/rls/fs/2001/3766.htm> site visited January 2006. This statement was authored by US Ambassador Donald J. McConnell, Deputy Assistant Secretary of State for Security Operations" and published separately in the Electronic Journal of the Department of State, Volume 6, No. 2, June 2001. Also see "Actions by the US to Stem the Illicit Trade in Small Arms and Light Weapons" June 9, 2006 <http://www.state.gov/t/pm/rls/fs/67700.htm> (site visited February 2007) and "United States Support for the United National Program of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All its Aspects," July 24, 2003 <http://www.state.gov/t/pm/rls/othr/misc/23105.htm> (visited February 2007).

<sup>8</sup> These are the themes repeated many times in US statements to various meetings associated with the UN SALW process, 2001-2006. See for example, speeches by John Bolton (2001) and Robert Joseph (2006).

<sup>9</sup> "The U.S. Approach to Combating the Spread of Small Arms," June 2, 2001

<http://www.state.gov/t/pm/rls/fs/2001/3766.htm> site visited January 2006. This statement was authored by US Ambassador Donald J. McConnell, Deputy Assistant Secretary of State for Security Operations" and published separately in the Electronic Journal of the Department of State, Volume 6, No. 2, June 2001. Also see "Actions by the US to Stem the Illicit Trade in Small Arms and Light Weapons" June 9, 2006 <http://www.state.gov/t/pm/rls/fs/67700.htm> (site visited February 2007) and "United States Support for the United National Program of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All its Aspects," July 24, 2003 <http://www.state.gov/t/pm/rls/othr/misc/23105.htm> (visited February 2007).

<sup>10</sup> The US Department of State lists the first three of these statutes as the principal laws that address the production, export and import, brokering, illicit possession, illicit trade, and illicit manufacturing of small arms and light weapons. (See <http://www.state.gov/t/pm/rls/fs/67700.htm>, consulted February 2007.) The Arms Export Control Act applies to exports of items that are unambiguously considered to be weapons, and the Export Administration Act covers dual-use items and other non-military exports. Most small arms and light weapons are thus covered by the AECA, but long-barrel shotguns are governed by the EAA. The Foreign Assistance Act of 1961 governs US military aid, including grants and loans for purchase of weaponry.

<sup>11</sup> See Lora Lumpe, "U.S. Policy on Small/Light Arms Exports," 1997

<http://www.fas.org/asmp/library/reports/AAAS.htm> A 2002 law requires that Congress must be notified of proposed sales of firearms under Category I of the Munitions list valued over \$1 million, 22 USC § 2776.

<sup>12</sup> Such special circumstances include unforeseen emergencies, international narcotics control assistance, international disaster assistance, and antiterrorism assistance, 22 USC 2318.

<sup>13</sup> See Title 22 USC, Chapter 32 (§2314) and Chapter 39 (§2751 and 2785).

<sup>14</sup> Section 121.1 "US Munitions List" of ITAR <http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=256b4bf267d0cc3949958326349910cc&rgn=div8&view=text&node=22:1.0.1.13.59.0.33.1&idno=22>

(February 2007) Of conventional small arms, only shotguns longer than 18 inches are considered a dual use item, regulated by EAR.

<sup>15</sup> ITAR, Title 22, § 129.2

<sup>16</sup> For example, see National Security Archive, War in Colombia

<http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB69/part1.html> and PL 105-118 (Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1998).

<sup>17</sup> Matt Schroeder, “Transparency and accountability in arms export systems: the United States as a case study.” *Disarmament Forum* Fall 2005 and Lumpe, “U.S. Policy on Small/Light Arms Exports.”

<sup>18</sup> Grimmett, Richard F. “International Small Arms and Light Weapons Transfers: US Policy,” CRS Report for Congress, RS20958, October 2, 2006, p. 2.

<sup>19</sup> In June 2003 CBP inspectors in Portland Oregon discovered a cache of shotguns, handguns and ammunition valued at nearly \$500,000. (“Increased Scrutiny Bags Illegal Shipment of Weapons in Portland,” CBP Today, October/November 2003. Also see “CBP Border Patrol Checkpoint Seizes Arsenal of Weapons,” October 19, 2006, site visited March 2007.

[http://www.cbp.gov/xp/cgov/newsroom/news\\_releases/archives/2006\\_news\\_releases/102006/10192006\\_4.xml](http://www.cbp.gov/xp/cgov/newsroom/news_releases/archives/2006_news_releases/102006/10192006_4.xml)

<sup>20</sup> Covered widely in the press and at ICE website, March 2007,

<http://www.ice.gov/pi/news/newsreleases/articles/070308baltimore.htm>

<sup>21</sup> See, for example, “Operation White Terror: A Tale of Drugs, Guns, and Murder,” relating a sting operation carried out in 2002 by the Drug Enforcement Agency and the FBI in the US Virgin Islands. The interrupted deal involved a number of MANPADS, 9000 assault rifles and nearly 300,000 grenades destined for Colombian paramilitary Autodefensas Unidas de Colombia.

<sup>22</sup> US Department of Justice, “ATF 2005 Annual Report.” Also see, for example, ATF News, “ATF Arrests Two More in Mexican Firearms Trafficking Investigation,” November 2005

[http://www.atf.gov/press/fy05press/field/112205phoe\\_atf\\_english.htm](http://www.atf.gov/press/fy05press/field/112205phoe_atf_english.htm)

<sup>23</sup> Department of the Treasury, Bureau of ATF, “Following the Gun: Enforcing Federal Laws Against Firearms Traffickers” 2000, p 23. (In 2003 ATF was moved from Treasury to Justice Department.)

<sup>24</sup> US Treasury Department, “Treasury Designates Victor Bout’s International Arms Trafficking Network,” (April 26, 2005) <http://www.treas.gov/press/releases/js2406.htm> .

<sup>25</sup> For a review of the program’s operations during the 1990’s, see Fleur A. Burke, How Little is Enough? U.S. End-Use Monitoring and Oversight of the Weapons Trade (Washington, DC: Center for Defense Information, 2002): 49-68.

<sup>26</sup> United States General Accounting Office, “Foreign Military Sales: Changes Needed to Correct Weaknesses in End-Use Monitoring Program,” GAO/NSIAD-00-208, August 2000.

<sup>27</sup> US Department of the Army, Memorandum “Golden Sentry End-Use Monitoring STINGER Missile and Gripstock Inventory: Standardized Procedures,” May 25, 2005.

<sup>28</sup> Raw data are available through FAS, “FAS Obtains Data on Arms Export End-use Monitoring,”

[http://www.fas.org/blog/ssp/2007/01/fas\\_obtains\\_data\\_on\\_arms\\_expor.php](http://www.fas.org/blog/ssp/2007/01/fas_obtains_data_on_arms_expor.php).

<sup>29</sup> Based on data in 2006 “Defense Trade Control Overview,” (613/60,000 cases) and Fleur Burke, How Little is Enough?. Also see US presentation on the Blue Lantern program to the Eighth International Export Control Conference (2007) [http://www.exportcontrol.org/library/conferences/1379/STITZIEL\\_--\\_Blue\\_Lantern\\_PPT\\_for\\_Bucharest\\_Conference\\_Mar\\_06.pdf](http://www.exportcontrol.org/library/conferences/1379/STITZIEL_--_Blue_Lantern_PPT_for_Bucharest_Conference_Mar_06.pdf) Most of the blue lantern inspections done pre-licensing, but 40-45% are actually post shipment according to the 2007 powerpoint.

<sup>30</sup> On at least two separate occasions in the past three years, members of the UK House of Commons have raised the US Blue Lantern program when pressing the UK Foreign Minister on actions intended to enhance UK end-use policy and programs.

<http://www.publications.parliament.uk/pa/cm200506/cmhansrd/cm061009/text/61009w0096.htm> (2006)

and <http://www.publications.parliament.uk/pa/cm200304/cmselect/cmcaff/390/4022502.htm> (2004). Also

see US presentation on the Blue Lantern program to the Eighth International Export Control Conference

[http://www.exportcontrol.org/library/conferences/1379/STITZIEL\\_--\\_Blue\\_Lantern\\_PPT\\_for\\_Bucharest\\_Conference\\_Mar\\_06.pdf](http://www.exportcontrol.org/library/conferences/1379/STITZIEL_--_Blue_Lantern_PPT_for_Bucharest_Conference_Mar_06.pdf)

<sup>31</sup> See annual reports on “End-Use Monitoring of Defense Articles and Defense Services, Commercial Exports” available from DDTTC, <http://www.pmdtcc.state.gov/rptenduseintro.htm>

<sup>32</sup> “Defense Trade Control Overview,” 2006.

<sup>33</sup> <http://www.bis.doc.gov/complianceandenforcement/ListsToCheck.htm>



- <sup>34</sup> For example, BIS regularly offers training seminars on US export controls, and DDTC runs a help desk. <http://www.bis.doc.gov/SeminarsAndTraining/seminardescription.htm> and [http://www.pmdtc.state.gov/public\\_plan\\_standards.htm](http://www.pmdtc.state.gov/public_plan_standards.htm), visited February 2007.
- <sup>35</sup> Grimmett, CRS, 2006.
- <sup>36</sup> Tamar Gabelnick, Maria Haug, and Lora Lumpe, “A Guide to the US Small Arms Market, Industry, and Exports, 1998-2004.” Small Arms Survey Occasional Paper 19, 2006, p. 57. Exports are assessed in terms of dollar value and are based on customs data.
- <sup>37</sup> From “Defense Trade Controls Overview” at [http://www.fas.org/asmp/resources/110<sup>th</sup>/defense\\_trade\\_overview\\_2006.pdf](http://www.fas.org/asmp/resources/110<sup>th</sup>/defense_trade_overview_2006.pdf)
- <sup>38</sup> License authorizations are reported in US Department of State, Direct Commercial Sales Authorizations for Fiscal Year 2006 [pursuant to Sections 655 of the Foreign Assistance Act], 2007. <http://www.securityandcompetitiveness.org/media/show/2243.html>
- <sup>39</sup> Coalition for Security and Competitiveness, <http://www.securityandcompetitiveness.org/proposals/>.
- <sup>40</sup> “Overseas management of assistance and sales programs,” 22 USC 2321i(f)
- <sup>41</sup> Defense Security Cooperation Agency, “International Shows” [http://www.dsca.osd.mil/programs/air\\_trade\\_shows/default.htm](http://www.dsca.osd.mil/programs/air_trade_shows/default.htm). Also see Lora Lumpe and Jeff Donarski, The Arms Trade Revealed: A Guide for Investigators and Activists (Washington, DC: Federation of American Scientists, 1998): 42-43.
- <sup>42</sup> Gabelnick, Haug, and Lumpe, “A Guide to the US Small Arms Market, Industry, and Exports, 1998-2004,” pp 62-63.
- <sup>43</sup> “US Transfers Humvees, Weapons to Afghan National Army,” February 6, 2007 <http://www.defenselink.mil/News/NewsArticle.aspx?ID=2944> (site visited February 21, 2007).
- <sup>44</sup> Formally, the Firearms Protocol is entitled “Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime.” See “U.S. Measures to Fight the Illicit Small Arms/Light Weapons Trade,” State Dept Fact sheet, July 5, 2001.
- <sup>45</sup> See White House, Conventional Arms Transfer Policy, February 17, 1995
- <sup>46</sup> See US State Department, “The MANPADS Menace: Combating the Threat to Global Aviation from Man-Portable Air Defense Systems,” 2005 <http://www.state.gov/t/pm/rls/fs/53558.htm>
- <sup>47</sup> CATR has been charged to oversee the White House MANPADS Initiative.
- <sup>48</sup> [http://www.unodc.org/unodc/crime\\_cicp\\_signatures.html](http://www.unodc.org/unodc/crime_cicp_signatures.html)
- <sup>49</sup> At a UN meeting in June 2004, the US went on record in a formal statement indicating its opposition to a legally-binding instrument on marking and tracing. At the Preparatory meeting of the UN Review conference on small arms in January 2006, US officials cautioned against “prejudicing” the work of a governmental group of experts on brokering (by anticipating a legally binding instrument) and underscored that position at a meeting of the GGE a few weeks later
- <sup>50</sup> Regarding leadership at the Department of State, see Rachel Stohl, “US Small Arms and Global Transfer Principles” (Canada: Project Ploughshares, March 2006) and Loretta Bondi, “U.S. Policy on Small Arms and Light Weapons,” Naval War College Review, Winter 2006, Vol 59, No. 1.
- <sup>51</sup> See Department of Commerce, Bureau of Industry and Security, <http://www.bis.doc.gov/InternationalPrograms/index.htm>, consulted February 2007.
- <sup>52</sup> <http://www.exportcontrol.org/index.php/pagetype/frontpage/id/1351.html> The Office of Conventional Arms Threat Reduction (CATR) in State has been assigned responsibility to work with other countries to strengthen their export controls and practices regarding MANPADS.
- <sup>53</sup> See reports of annual international export control conferences, <http://www.exportcontrol.org/index.php/pagetype/pastconferences/id/1379.html>. Quote is from 1999, [www.exportcontrol.org/library/conferences/1379/ox1999.pdf](http://www.exportcontrol.org/library/conferences/1379/ox1999.pdf).
- <sup>54</sup> BIS, 2006 Foreign Policy Report, [http://www.bis.doc.gov/News/2006/foreignPolicyReport/fprchap02\\_CrimeControl.html](http://www.bis.doc.gov/News/2006/foreignPolicyReport/fprchap02_CrimeControl.html)
- <sup>55</sup> Grimmett, CRS, 2006 op cit.
- <sup>56</sup> <http://www.state.gov/t/pm/rls/fs/53558.htm> For example, in 2003 Cambodia agreed to destroy its entire MANPADS stockpile with US assistance. See DTRA [http://www.dtra.mil/newsservices/fact\\_sheets/display.cfm?fs=salw](http://www.dtra.mil/newsservices/fact_sheets/display.cfm?fs=salw)
- <sup>57</sup> Ibid., [http://www.dtra.mil/newsservices/fact\\_sheets/display.cfm?fs=salw](http://www.dtra.mil/newsservices/fact_sheets/display.cfm?fs=salw)



<sup>59</sup> FCNL, “Budget Memo: Small Arms/Light Weapons Destruction”

February 2007 [http://www.fcnl.org/issues/item.php?item\\_id=2313&issue\\_id=46](http://www.fcnl.org/issues/item.php?item_id=2313&issue_id=46).

<sup>60</sup> As reported by SIGIR, the US transferred some 370,000 weapons valued at \$133,000,000 from 2003-2005. SIGIR, “Iraqi Security Forces.” According to Congressionally-mandated “Section 655 Reports,” transfers of small arms and light weapons through the Foreign Military Sales program from FY1997 to FY 2001 amounted to \$119 million total, based on the data compiled by Tamar Gabelnick, Maria Haug, and Lora Lumpe, “A Guide to the US Small Arms Market, Industry, and Exports, 1998-2004.” Small Arms Survey Occasional Paper 19, 2006, p. 65. It should be noted that the \$119 million figure does not include the value of licensed Direct Commercial Sales. As signaled by Gabelnick et al., licenses are not always followed by sales. Customs data, however, indicate that actual commercial transfers during the calendar years 1998-2002 amounted to about \$96 million annually (\$481.2 million over the five-year period) [Gabelnick et al., p. 59].

<sup>61</sup> Department of Defense, “Security Assistance Management Manual,” Chapter 8, 2003.

<sup>62</sup> For a discussion of the origins of these provisions in the post-Vietnam era, see Harold Hongju Koh, The National Security Constitution: Sharing Power After the Iran-Contra Affair (New Haven: Yale University Press, 1991), pp. 57-59. According to Independent Counsel Lawrence Walsh, US law establishes two clear principles: the president is personally accountable for covert operations, and all covert operations must be reported to Congress (Iran-Contra: The Final Report [New York: Random House, 1994], p. 64).

<sup>63</sup> See Steve Coll, Ghost Wars: The Secret History of the CIA, Afghanistan, and Bin Laden, from the Soviet Invasion to September 11, 2001 (New York: Penguin Books, 2004).

<sup>64</sup> Government of Netherlands, Srebrenica: A ‘Safe’ Area, Appendix II: Intelligence and the War in Bosnia 1992-1995; Chapter 4, Section 2, “Arms supplies to the ABiH: the Croatian Pipeline,” (2002). [http://213.222.3.5/Srebrenica/toc/p6\\_c04\\_s002\\_b02.html](http://213.222.3.5/Srebrenica/toc/p6_c04_s002_b02.html)

<sup>65</sup> See William J. Daugherty, “Approval and Review of Covert Action Programs Since Reagan,” International Journal of Intelligence and Counterintelligence 17 (2004), 62-80.

<sup>66</sup> See Lucy Mathiak and Lora Lumpe, “Government Gun –Running to Guerrillas,” in Running Guns: The Global Black Market in Small Arms edited by Lora Lumpe (London: Zed Books, 2000), pp. 68-70. The text of the Iraq Liberation Act of 1998 (HR 4655) is available at <http://thomas.loc.gov>

<sup>67</sup> Intelligence agencies under the aegis of the Pentagon include National Security Agency, Army Intelligence, Air Force Intelligence, Marine Corps Intelligence, Navy Intelligence, the Defense Intelligence Agency, the National Reconnaissance Office, and the National Geospatial-Intelligence Agency.

<sup>68</sup> See the National Security Archive, “The Iran-Contra Affair Twenty Years On,” <http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB210/index.htm>; Walsh, Iran-Contra, op cit.; and Michael Klare and David Anderson, A Scourge of Guns: The Diffusion of Small Arms and Light Weapons in Latin America (Washington, DC: Federation of American Scientists: 1996), 75-87.

<sup>69</sup> Steve Coll, Ghost Wars: The Secret History of the CIA, Afghanistan, and Bin Laden, from the Soviet Invasion to September 10, 2001 (NY: Penguin Books, 2005).

<sup>70</sup> Government of Netherlands, Srebrenica: A ‘Safe’ Area, op cit. See Chapter 4 of Appendix II, “Secret Arms to the ABiH: The Black Flights to Tuzla.” [http://213.222.3.5/srebrenica/toc/p6\\_c04\\_s003\\_b03.htm](http://213.222.3.5/srebrenica/toc/p6_c04_s003_b03.htm).

<sup>71</sup> Amnesty International, “Democratic Republic of Congo: Arming the East,” AFR/62/006/2005 (July 2005), pp. 26-32 and “Dead on Time – Arms Transportation, Brokering and the Threat to Human Rights,” ACT 30/008/2006 (May 2006), 104-117.

<sup>72</sup> Michael Hirsh and Jeffrey Bartholet, “Fighting in the Shadows: Battles Rage near the Scene of ‘Black Hawk Down’ – and a Covert American Hand is Tied to the Warlords,” Newsweek, June 5 2006. Also see “CIA Failed in Somalia, Officials Say. Money for Warlords Backfired, They Assert.” International Herald Tribune, June 9, 2006.

<sup>73</sup> “Seymour Hersh: U.S. Indirectly Backed Islamist Militants Fighting Lebanese Army,” Democracy Now May 24, 2007 <http://www.democracynow.org/article.pl?sid=07/05/24/143208>

<sup>74</sup> See Heller, Nathaniel and Sites, Tom. “Collateral Damage: U.S. Hands out vast sums of money to combat terrorism while ignoring human rights records; lobbying key to funding flows.” Center for Public Integrity, May 22, 2007. Also see US Senate, Committee on Foreign Relations, “Embassies as Command Posts in the Anti-Terror Campaign,” December 15, 2006.

<sup>75</sup> Funding requests for this program have increased steadily. For FY07, funding for 1206 Training was increased from \$200 million to \$300 million, and the Bush Administration has requested \$500 million for FY08.

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<sup>76</sup> Heller and Sites, "Collateral Damage."

<sup>77</sup> Human Rights Watch, "United States: Dangerous Dealings," February 2002, p. 6, citing news reports from the Wall Street Journal and the Washington Post.

<sup>78</sup> See 2006 Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Hurricane Recovery, PL 109-234, June 15, 2006, including sections on Afghanistan Security Forces Fund, Iraq Security Forces Fund, Drug Interdiction and Counter-Drug Activities, and General Provisions under Section 1205.

<sup>79</sup> See exchange between John Stockwell and Gerald Bender in "The CIA in Angola," New York Review of Books, 26 (May 17, 1979).

<sup>80</sup> See Robert Parry, "Iran-Contra and Wen Ho Lee," *Consortiumnews.com*, September 18, 2000. In some circumstances, there may be less hesitancy to provide US weapons. According to the Dutch government's report on Srebrenica, during the conflict in the Balkans, observers commented on the sudden appearance of M-16's and took that as evidence of US involvement. Given the mood in Congress at the time, this may have represented a political asset for the Clinton Administration rather than liability.

<sup>81</sup> In addition to more than 160,000 AK-47 assault rifles, the US provided some 40,000 Warsaw Pact grenade launchers, machine guns and other rifles to Iraqi forces between 2003-2005, purchased with Iraq Relief and Reconstruction Funds. These weapons were in addition to US-origin weapons. SIGIR," Iraqi Security Forces."

<sup>82</sup> The 2006 National Defense Authorization Act stipulates that drawdowns from US stock should adhere to statutes related to excess defense articles under 22 USC 2321j, but do not make reference to requirements for end-use certification and retransfer, reflected in 22 USC 2314.

<sup>83</sup> Amnesty International, "Dead on Time," op cit., p. 104.

<sup>84</sup> The Inspector General's report covered 19 contracts awarded between November 2003 and April 2005, roughly coincident with US command over stabilization forces in Bosnia.

<sup>85</sup> See Douglas Farah and Stephen Braun, "The Merchant of Death," Foreign Policy (November/December 2006).

<sup>86</sup> Jeffrey Boutwell and Michael Klare, "Small Arms and Light Weapons: Controlling the Real Instruments of War," Arms Control Today (August/September 1998). Also see Steve Coll, Ghost Wars, op cit.

<sup>87</sup> Kim Cragin and Bruce Hoffman, Arms Trafficking and Colombia (California: Rand, 2003), p. 11.

<sup>88</sup> Department of Commerce, BIS, "Essential Elements of an Effective Export Control System,"

<http://www.exportcontrol.org/index.php/pagetype/htmlpage/id/2081.html>.

<sup>89</sup> US Department of State, Conventional Arms Transfer (CAT) Policy

<http://www.state.gov/t/pm/rsat/c14023.htm>

<sup>90</sup> Security Assistance Management Manual, op cit.